

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK

JASON TELLER,

Plaintiff,

vs.

**AFFIDAVIT IN SUPPORT OF
DEFENDANT'S MOTION TO
DISMISS PURSUANT TO
RULE 12(b)(6)**

**DANIEL ELSTEIN, AND
TRASON ELM, LLC,**

Civil Action No.: 5:21-cv-
00314-BKS-TWD

Defendants,

STATE OF NEW YORK) SS:
COUNTY OF ONONDAGA)

Corinne Knupp, being duly sworn, deposes and states as follows:

1. I am employed by Trason Elm, LLC (“Trason Elm” or “Defendant”), as its Chief Financial Officer and Senior Vice President of Operations, and I am fully familiar with the facts and circumstances surrounding this action.

2. I have personal knowledge of the Loans and Loan Documents referenced in this Motion with Exhibits (“Motion”). Capitalized terms not otherwise defined herein shall have the meaning described thereto in the Defendant’s Memorandum of Law dated the date hereof and duly filed with this Court (“Motion to Dismiss”) and/or the Attorney’s Affirmation of F. Scott Molnar, Esq., dated the date hereof and duly filed with this Court.

3. I make this Affidavit in Support (“Affidavit”) in support of Defendant’s Motion to Dismiss Jason Teller (“Plaintiff”)’s Complaint filed March 19, 2021 (hereinafter “Complaint”).

UNDISPUTED FACTS SUPPORTING MOTION TO DISMISS

4. On March 5, 2020 Defendant filed a Verified Complaint in Onondaga County Supreme Court (“State Court Action”) under the caption *Trason Elm, LLC v. Buffalo State Ventures, LLC and DHD Ventures, LLC*, Index No.: 002400/2020, filed March 5, 2020, (Buffalo State Ventures, LLC and DHD Ventures, LLC are hereafter collectively referred to as the “State Court Action Defendants”). On October 30, 2020 Defendants filed a motion for summary judgment on its claims against the State Court Action Defendants.

5. On December 2, 2020 the Onondaga County Supreme Court granted Defendants’ motion for summary judgment on its claims against the State Court Action Defendants and dismissing their counterclaims. Summary judgment is an adjudication on the merits of a claim, and the State Court Action Defendants have yet to perfect an appeal of the summary judgment in the State Court Action.

6. The action at bar arises from the same set of facts as the State Court Action.

7. Plaintiff’s claims in this action mirror the counterclaims asserted in the Answer of the State Court Action Defendants in the State Court Action (Exhibit A) that were dismissed when Trason Elm’s motion for summary judgment was granted. The State Court Action counterclaims included breach of contract relating to the First Modification, breach of contract relating to the Second Modification, breach of contract relating to the Release Agreement, unjust enrichment, breach of the implied covenant of good faith and fair dealing, fraud and fraudulent inducement, promissory estoppel and application for a declaratory judgment. Plaintiff’s claims in his Complaint include breach of contract relating to the First Modification, breach of contract relating to the Settlement and Release Agreement, breach of contract relating to the Aldi Agreement, unjust

enrichment, breach of the implied covenant of good faith and fair dealing, fraud and fraudulent inducement and seeks punitive damages.

8. Plaintiff is a co-owner of Buffalo State Ventures, LLC and is the president of DHD Ventures Management Company, Inc. which is the manager of Buffalo State Ventures, LLC and is a guarantor of the Commercial Loan Agreement. In a July 7, 2021 deposition (Exhibit B), when asked about damages, Plaintiff stated “Well, it depends on how this case plays out, because I consider DHD Ventures me.”. It is clear that Plaintiff considers DHD Ventures, LLC to be an extension of himself and that his interests are intertwined with those of DHD Ventures, LLC.

9. As Plaintiff considers DHD Ventures, LLC and himself to be one in the same it would be quite disingenuous for Plaintiff to claim that he was not in privity with DHD Ventures, LLC in the State Court Action. Because Plaintiff was in privity with DHD Ventures, LLC, his claims in this action either were or could have been brought in the State Court Action and the counterclaims which mirror the claims in this action were adjudicated on the merits. Plaintiff’s claims should therefore be dismissed as he fails to state any claim for which relief can be granted.

UNDISPUTED FACTS SUPPORTING UPHOLDING SUMMARY JUDGEMENT

10. Defendants sought a money judgment arising out of Buffalo State Ventures, LLC’s failure to make payments in accordance with the terms of a Promissory Note dated July 8, 2016 in the amount of \$1,500,000 (“First Note”) and Buffalo State Ventures, LLC failure to make payments in accordance with the Promissory Note dated May 31, 2017, in the amount of \$1,800,000 (“Second Note”) (collectively the “Notes”) and all related relief stated therein. The action also sought an Order of the Court in favor of Defendants against DHD Ventures, LLC,

foreclosing perfected security interests DHD Ventures, LLC granted to Defendants concerning limited liability company membership interests in DHD Allentown, LLC and DHD Bethlehem, LLC, as collateral (the “Collateral”) for payments of principal and interest due under the Notes.

11. Pursuant to and in accordance to the terms of the First Note, Buffalo State Ventures, LLC promised to pay to Defendants, the sum of \$1,500,000 together with interest on the unpaid principal balance thereof from time to time outstanding, at the rates and at the times provided in said First Note.

12. The First Note was delivered by Buffalo State Ventures, LLC to Defendants, as Lender, set forth a maturity date of February 1, 2018, and specified an interest rate of 15% per annum accruing upon the unpaid principal balance thereof. The First Note required that interest payments were to be made to Defendants by Buffalo State Ventures, LLC commencing August 1, 2016, and due on the first date of each month thereafter until the February 1, 2018. A true copy of the First Note is attached as Exhibit C.

13. On July 8, 2016, Buffalo State Ventures, LLC also entered into a Commercial Loan Agreement with Defendants concerning the First Note and loan memorialized thereby (“First Loan”), making reference to the First Note and other Loan Documents. A true copy of said Commercial Loan Agreement dated July 8, 2016 is attached as Exhibit D.

14. On July 8, 2016, as a condition precedent to Defendants’ Agreement to extend the First Loan to Buffalo State Ventures, LLC, and for other good and valuable consideration, DHD Ventures, LLC executed a Collateral Pledge Agreement dated July 8, 2016 (hereinafter “Collateral Pledge Agreement – Allentown”) in favor of Defendants, granting to Defendants a continuing security interest in and right of set off against collateral consisting of all of DHD Ventures, LLC

membership interest in DHD Allentown, LLC, as evidenced by one (1) Membership Certificate in DHD Allentown, LLC dated July 8, 2016, granting to Defendants, as secured party, all membership rights of DHD Ventures, LLC, including voting rights, a true copy of which is attached as Exhibit E.

15. On July 8, 2016, also as a condition precedent to Defendants' Agreement to extend the First Loan to Buffalo State Ventures, LLC, and for other good and valuable consideration, DHD Ventures, LLC executed a Collateral Pledge Agreement dated July 8, 2016 (hereinafter "Collateral Pledge Agreement – Bethlehem") in favor of Defendants, granting to Defendants a continuing security interest in and right of set off against collateral consisting of all of DHD Ventures, LLC membership interest in DHD Bethlehem, LLC, as evidenced by one (1) Membership Certificate in DHD Bethlehem, LLC dated July 8, 2016, granting to Defendants, as secured party, all membership rights of DHD Ventures, LLC, including voting rights, a true copy of which is attached as Exhibit F.

16. On or about July 8, 2016, DHD Ventures, LLC executed a Membership Interest Power in favor of Defendants, and delivered to Defendants the original Membership Certificate it possessed in the limited liability company known as DHD Allentown, LLC (hereinafter the "Allentown Certificate"), dated July 8, 2016, a true copy of which is attached hereto as Exhibit G, and thereby Plaintiff perfected its security interest in the Allentown Certificate under Article 9 of the Uniform Commercial Code by taking control and possession of the original thereof.

17. On or about July 8, 2016, DHD Ventures, LLC executed a Membership Interest Power in favor of Defendants, and delivered to Defendants the original Membership Certificate it possessed in the limited liability company known as DHD Bethlehem, LLC (hereinafter the

“Bethlehem Certificate”), dated July 8, 2016, a true copy of which is attached hereto as Exhibit H, and thereby Defendants perfected its security interest in the Bethlehem Certificate under Article 9 of the Uniform Commercial Code by taking control and possession of the original thereof.

18. On or about May 31, 2017, Buffalo State Ventures, LLC executed and delivered the Second Note in the principal sum of \$1,800,000 (“Second Loan”) payable to Defendants, a true copy of which is attached hereto as Exhibit I, reflecting a maturity date of June 1, 2022, with interest accruing against the Second Loan in the amount of 15% per annum, with Buffalo State Ventures, LLC agreeing to make payments of interest only to Defendants on the date of the first Second Loan advance, thereafter making monthly payments to Defendants of interest only on the accumulated amount of advances, up to and including June 1, 2019, with payments thereafter of principal and interest due from Buffalo State Ventures, LLC to Defendants on a monthly basis for a period of sixty (60) months, amortized over a period of Three Hundred (300) months.

19. Also on or about May 31, 2017, and as a condition precedent to Defendants agreeing to extend the Second Loan to Buffalo State Ventures, LLC, DHD Ventures, LLC executed: (a) that certain amendment to Collateral Pledge Agreement with Defendants, as secured party, increasing the indebtedness secured by and defined in the Collateral Pledge Agreement – Allentown, to include the \$1,800,000 Second Note from Buffalo State Ventures, LLC in favor of Defendants; and (b) that certain amendment to Collateral Pledge Agreement with Defendants, as secured party, increasing the indebtedness secured by and defined in the Collateral Pledge Agreement – Bethlehem, to include the \$1,800,000 Second Note from Buffalo State Ventures, LLC in favor of Defendants, true copies of which are attached respectively as Exhibit J and Exhibit K.

20. Thereafter, on or about December 16, 2019, pursuant to and in accordance with the terms of the Collateral Pledge Agreement – Allentown, as amended, Defendants also perfected its security interest in the Allentown Certificate by filing a UCC-1 Financing Statement with the North Carolina Department of the Secretary of State, File Number 20190129424F, naming Trason Elm, LLC as secured party, naming DHD Ventures, LLC as debtor, and describing the collateral pledged and covered under said Financing Statement as all of DHD Ventures, LLC membership interest in DHD Allentown, LLC, evidenced by a 100 unit Membership Certificate issued to Defendant DHD Ventures, LLC dated July 8, 2016, together with all rights pertaining to the Membership Certificate, as set forth therein, including voting rights, a true copy of which is attached as Exhibit L.

21. Also on or about December 16, 2019, pursuant to and in accordance with the terms of the Collateral Pledge Agreement - Bethlehem, as amended, Defendants also perfected its security interested in the Bethlehem Certificate by filing a UCC-1 Financing Statement with the North Carolina Department of the Secretary of State, File Number 20190129427J, naming Defendants Trason Elm, LLC as secured party, naming DHD Ventures, LLC as debtor, and describing the collateral pledged and covered under said Financing Statement as all of DHD Ventures, LLC membership interest in DHD Bethlehem, LLC, evidenced by a 100 unit Membership Certificate issued to DHD Ventures dated July 8, 2016, together with all rights pertaining to the Membership Certificate, as set forth therein, including voting rights, a true copy of which is attached hereto as Exhibit M.

22. By notice dated February 21, 2020, served by Defendants upon the State Court Action Defendants pursuant to the Loan Documents, Defendants declared Buffalo State Ventures,

LLC in default under the First Note, the Second Note and the Loan Documents, for failing to make payments of interest and principal when due, declaring and demanding the principal, together with all accrued interest at once due and payable, and despite demand therefore, Buffalo State Ventures, LLC failed to pay Defendants all principal, interest and other fees to which it is entitled under the First Note, Second Note and Loan Documents.

23. As of October 1, 2020, the full principal balance of the Notes remained unpaid in the amount of \$3,142,908.83, and the accrued but unpaid interest in default totals \$1,317,986.74. As a result, the State Court Action Defendants are indebted to Trason Elm in at least the sum of \$4,460,895.57, which is undisputed. Attached hereto as Exhibit N is an accounting produced by Trason Elm which reflects the foregoing, in detail, prepared by the Supreme Court Action Defendants on or about November 2, 2020. It is also worth noting to the Court that the State Court Action Defendants have made no additional payments to Trason Elm to date, which is an ongoing violation of the Loan Documents. As a result, it is undisputed that Defendant is entitled to Judgment as a matter of law against the Supreme Court Action Defendants, and the Plaintiff referred to herein, who is re-litigating an ongoing State Court Action, via this action in the United States District Court for the Northern District of New York. Accordingly, this action must be dismissed.

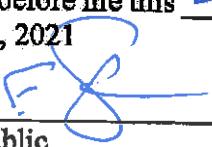
WHEREFORE, upon the foregoing, it is respectfully requested that this Court grant Defendant's Motion to Dismiss Plaintiff's Complaint, and for such other and further relief as the court deems just and proper.

[SIGNATURE APPEARS ON THE FOLLOWING PAGE]



CORINNE KNUPP

Sworn to before me this 22 day
of September, 2021


Notary Public

F. SCOTT MOLNAR
Notary Public in the State of New York
Qualified in Onon. Co. No. 4994351
My Commission Expires April 6, 20 22